IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6039 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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A.M.KAPASI - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR AS SUPEHIA for Petitioner(s) : 1,
MR SIRAJ GORI AGP for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 07/07/2006

ORAL JUDGMENT

1. The petitioner is a retired Government servant having sought to grant him permission to retire on voluntary basis on 30th July, 1994. Order was passed by the Government on 27th July, 1994 permitting the petitioner to retire on voluntary basis. As per the provision in Service Regulations the

petitioner was granted service benefits which included payment of third higher pay scale. The petitioner retired retaining the said benefits. It appears that subsequently there was some changes made by resolution dated 10th October, 1994. It is the opinion of the Government that by virtue of subsequent resolution the petitioner was not entitled to retain the benefit of third higher pay scale as he had opted for voluntary retirement. No steps was however taken to correct the pay scale of the petitioner or his pensionary benefits. The petitioner not only retained the pay granted to him, enjoyed the pensionary benefits on the same basis. After years together suddenly an order dated 19th August, 2003 came to be passed by the Government holding that the petitioner is not entitled to retain his pay fixation in the higher pay scale and his pay fixation in the scale of 4500-5700 is cancelled. It is this order dated 19th August, 2003 the petitioner has challenged in the petition.

2. Having heard learned advocates appearing for the parties, I find that the impugned order cannot sustain for following reasons:

2.1 Firstly the petitioner retired way back in the year 1994. No steps were taken to modify or to rectify his pay scale even if it was otherwise open. Nearly 10 years passed after the retirement of the petitioner and he enjoyed full benefits of his pay fixation. The respondents belatedly and unilaterally by the impugned order dated 19th August, 2003 not only cancelled the pay fixation made in favour of the petitioner w.e.f. 19th March, 1992, also held that on account of subsequent resolution dated 11/5/2001, the petitioner is not

entitled to retain the benefits of third higher pay scale. It may be noted that the petitioner was granted such benefits pursuant to resolution dated 14/11/1991 which resolution was subsequently modified by the Government by resolution dated 16th October, 1994 by which time the petitioner had retired. It is the stand of the Government that only those employees who had superannuated or died between 14/11/1991 and 16/10/1994 would retain the benefits of earlier resolution dated 14/11/1991 and such consensus is not available to an employee who had opted for voluntary retirement. The action taken by the Government is grossly belated and is against the retired Government servant without giving an opportunity being heard and is based on a resolution dated 11/5/2001 which came to be issued by the Government nearly 8 years after the petitioner retired. Considering all these aspects of the matter, I do not find it appropriate to permit the Government to change the pay fixation of the petitioner in facts of the present case.

3. In the result impugned order dated 19th August, 2003 is quashed. Rule is made absolute. No order as to costs.

4. Subsequent orders on the basis of the impugned order also will loss their efficacy. In the result the petition is allowed. Recovery made pursuant to the impugned order if any shall be retained to the petitioner within a period of two months from the date of receipt of a copy of this order.

(Akil Kureshi, J.)

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